

## **The complaint**

Mr P complains about a car he acquired under a hire purchase agreement with Blue Motor Finance Ltd ("BMF").

## **What happened**

In January 2023 Mr P entered into a regulated hire purchase agreement with BMF in relation to a used car. The car was about five years old and had been driven about 58,000 miles; its cash price was £23,777. It was only supplied with one key, and Mr P says that when he asked for the second key the dealership lied and fobbed him off. Mr P contacted the previous owner, who he says told him that he had delivered two keys to the dealership.

About a month after getting the car, Mr P found that two of the doors would not lock. He says when he raised this with the dealership, a lot of his time was wasted dealing with this issue and they stopped answering his calls. He raised the matter with BMF, who advised him to have the problem diagnosed, in case this was something to do with the missing key. He had this done by an independent party at his own expense (but this has since been reimbursed to him), and this confirmed that there was a fault with two of the door latches. But BMF disputes that this fault was present at the point of sale. In its final response BMF told him to get the fault fixed under warranty. Mr P had by then lost confidence in the dealership, but BMF reminded him that he also has a warranty with the RAC. Being dissatisfied with that response, Mr P brought this complaint to our service and cancelled his direct debit to BMF. But he has since re-instated his direct debit and brought his account up to date, and he has agreed to have the fault fixed by the RAC under warranty. And a second key has now been provided to him.

In support of his complaint, Mr P described how he had been anxious about the risk of his car being stolen. He said he had stopped using it since the fault became apparent.

Our investigator upheld this complaint. She thought that because two door latches had failed so soon after the point of sale, the fault must have been present at the point of sale (which BMF would be liable for), rather than developing later (for which BMF would not be liable). She thought this should have been remedied as soon as Mr P had reported it, instead of telling him to get a diagnostic inspection done. She recommended that BMF refund two of Mr P's monthly payments, with interest (being the period from when he had stopped driving the car up to the date of BMF's final response). She also recommended that BMF remove the adverse data about his missed direct debit payments from his credit file, and pay him a further £250 for his inconvenience arising from both issues.

BMF did not agree with that opinion. It accepted that under the Consumer Rights Act 2015 there is a presumption that a fault which occurs within six months of the point of sale was present at the point of sale, and that the burden of proving that it was not lies on the trader. But it argued that this burden had been met by an inspection of the vehicle at the point of sale, which had given it a clean bill of health. It argued that Mr P could have got the fault fixed under warranty within a few days, instead of prevaricating for a couple of months, and so he should not be entitled to a refund of two monthly payments for his impaired use of the vehicle which had mostly been caused by his own delay. BMF also argued that as the

mileage indicated that Mr P had driven about 2,300 miles in two months, he had actually had above average use of the car. It agreed to amend Mr P's credit file as a gesture of good will, and to pay him some compensation for his inconvenience, but it said that £250 was excessive. BMF asked for an ombudsman's decision.

I wrote a provisional decision which read as follows.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I am currently minded to uphold this complaint, but to award significantly less compensation than my colleague suggested.

Although BMF has provided evidence that the car was inspected at or around the point of sale and no problem was found with the door latches, I would not expect two doors to fail at around the same time so soon afterwards, and the fact that they did fail suggests to me on the balance of probabilities that the latches were already faulty, and that the fault was already developing although not readily apparent at the point of sale.

Given that Mr P understood that fixing the problem was urgent, as the car was at risk of being stolen, and given that he knew he could have it repaired under warranty with the RAC, I don't think he needed to delay doing that while he tried to get the dealership and then BMF to deal with it instead. I say that not to criticise him, but because legally everyone who pursues a claim for compensation has a duty to mitigate his loss, by doing what he reasonably can to alleviate the problem. Had he done so, I do not think that he would have had to do without the car for such a long time. For that reason, I am not persuaded that BMF should have to refund two monthly payments.

(I have disregarded BMF's point about the mileage driven by Mr P, because for all I know he could have driven all of those miles before the fault was discovered.)

While I appreciate that Mr P feels strongly about his case, he should not have cancelled his direct debit. He still had an obligation to make his monthly payments. So I cannot order BMF to amend his credit file (but this does not prevent BMF from doing that as a gesture of good will if it still wishes to do so).

Even though the matter of the faulty door latches could have been resolved more quickly, it must still have been annoying and stressful, since Mr P was quite reasonably worried about the car being stolen. And that was aggravated by the matter of the lost second key, although I can't hold BMF liable for any lies told, or poor customer service generally, by the dealership after the point of sale. Overall, I don't think that £250 compensation would be unfair or disproportionate, and so I am currently minded to award Mr P £250.

### **Responses to my provisional findings**

Both parties accepted my provisional decision and said they had nothing to add. So there is no reason for me to depart from my provisional findings, and I confirm them here.

### **My final decision**

My decision is that I uphold this complaint. I order Blue Motor Finance Ltd to pay Mr P £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or

reject my decision before 19 October 2023.

Richard Wood  
**Ombudsman**